

UNITED STATES DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION
WASHINGTON, DC

In the Matter of:

MARK L. SWEENEY

FAA Order No. 94-21

Served: June 22, 1994

Docket No. CP91NM0430

ORDER DENYING PETITION FOR RECONSIDERATION

Respondent Mark L. Sweeney seeks reconsideration of the Administrator's decision in In the Matter of Sweeney, FAA Order No. 93-29 (October 20, 1993). In that decision the Administrator affirmed the law judge's decision finding that Respondent operated an aircraft in a careless or reckless manner by creating a collision hazard and failing to see and avoid another aircraft.¹ A \$2,500 civil penalty was assessed. For the reasons set forth below, Respondent's petition for reconsideration is denied.

Respondent presents no new arguments and cites no law in his petition for reconsideration. Respondent again argues that FAA Principal Operations Inspector James McCoy, who testified as Complainant's principal witness, was not properly qualified as an expert witness because he did not have training in accident reconstruction. McCoy testified at the hearing as both a fact witness and as an expert witness. His testimony was based on his examinations of the aircraft and his interviews with the pilots after the collision. McCoy testified that he had training and experience in accident investigation with the FAA and the National

¹ Respondent was found to have violated Sections 91.9, 91.65(a), and 91.67(a) of the Federal Aviation Regulations (FAR), 14 C.F.R. §§ 91.9, 91.65(a), and 91.67(a). These regulations have been redesignated as 14 C.F.R. §§ 91.13(a), 91.111(a), and 91.113 (b) respectively.

Transportation Safety Board. By finding that Complainant established the violations, the law judge implicitly rejected Respondent's claim, raised at the hearing, that McCoy was not qualified to give his expert opinion as to how the collision occurred.

Respondent has not established, and the record of this case does not show, that the law judge abused his discretion in evaluating McCoy's expert witness qualifications and testimony. The trial judge has broad discretion in the matter of the admission or exclusion of expert evidence, and his action is to be sustained unless manifestly erroneous. Cella v. United States, 998 F.2d 418, 422 (7th Cir. 1993) (quoting Salem v. United States, 370 U.S. 31, 34 (1962)).

Respondent argues in his petition for reconsideration that the photographs of the damage sustained by the aircraft do not support McCoy's testimony that both pilots were flying straight and level immediately before the collision. However, McCoy did not testify that the pilots were flying straight and level. On the contrary, McCoy testified that Respondent's slower aircraft could not have caught up to the other aircraft if both pilots had been flying straight and level as they claimed. (TR 77, 97). It was actually Respondent, and the pilot of the other aircraft, who claimed that they had been flying straight and level before the collision. (TR 204, 244).

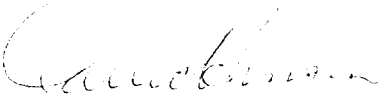
Although Respondent testified that he operated the aircraft with the landing lights on and used the radio during the flight to report points reached, he did not testify as to any other measures he took to see and avoid the other aircraft immediately before the collision. Respondent's expert witness testified that in a similar situation he would have turned or tried to contact the other aircraft, but Respondent failed to testify that he took either of these steps.

Respondent was correctly charged with violating Section 91.65(a) of the Federal Aviation Regulations, (FAR), 14 C.F.R. § 91.65, redesignated as 14 C.F.R. §

91.111(a), which provides: "[n]o person may operate an aircraft so close to another aircraft as to create a collision hazard." That section is applicable to all aircraft operating under all conditions. Letter from Chief, FAA Airspace, Air Traffic & Environmental Quality Branch to AGC-20 (February 13, 1976) (containing agency interpretation of Section 91.65). It is not limited to formation flights, as Respondent argues.

Respondent again claims that he filed a timely report with the National Aeronautics and Space Administration (NASA) for a waiver of the civil penalty under the Aviation Safety Reporting Program (ASRP). See FAA Order 2150.3A, 220 (1988) (discussing waiver of sanction under the ASRP). Respondent, however, has not presented, and the record does not contain, any evidence that Respondent filed an ASRP report.

Respondent's petition for reconsideration is denied.


DAVID R. HINSON, ADMINISTRATOR
Federal Aviation Administration

Issued this 21st day of June 1994